



city of san luis obispo

990 Palm Street, San Luis Obispo, CA 93401-3249

June 22, 2006

David Edge, County Administrator
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

Dear David:

As you know, in 2004 the City Council of San Luis Obispo approved a project on the Dalidio Ranch. However, the general plan amendment, zone change and a development agreement related to the project were placed on the ballot in 2005 and rejected by voters. The City Council's position in the aftermath of that vote was to continue to support a project on the Dalidio property, but to work with the developer to modify the general plan amendment, zone change and development agreement to make the project more acceptable to the community. The developer, however, has chosen to pursue a project using the initiative process, which raises for the City, the County and other agencies a number of significant issues.

Attached is an analysis the Dalidio Ranch initiative prepared by City staff. The analysis covers seven major areas of interest identified by our City Council that warrant further fact-finding, as outlined in a letter to Supervisor Lenthall on April 20, 2006. The analysis is not intended to provide a comprehensive "impact review" of the project itself, as would an EIR. However, we have cited several studies related to the earlier Marketplace project which may also shed light on the Dalidio Ranch proposal, given some parallels between the projects.

We ask that you share the enclosed review with appropriate County staff and with Board of Supervisor members. However one may feel about the history of the Dalidio property, there are significant governance and "good planning" issues that must be surfaced and understood before voters can make the most informed decision possible. Therefore, we also hope this analysis will contribute to the work of Supervisor Lenthall's fact-finding committee when that committee gets underway later this summer.

Sincerely,

Ken Hampian
City Administrative Officer

cc: City Council
Staff Distribution



City of San Luis Obispo Assessment of Certain Issues and Impacts Associated with the Dalidio Ranch Initiative (June 2006)

1. Legal Framework – What can be legally accomplished through the initiative process and what steps and procedures (such as permits from other agencies) will still remain if the vote is affirmative?

Under the California Environmental Quality Act (CEQA), initiative measures of the voters that are not sponsored by a public agency are specifically exempted from that law's requirements. The CEQA Guidelines provide that a "project," for CEQA purposes, does not include "the submittal of proposals to a vote of the people of the state or of a particular community." (14 CCR section 15378.) Thus, the Dalidio Ranch initiative measure is not subject to the requirements of CEQA.

The initiative process applies to legislative acts, that is, general rules that apply in future cases. Legislative acts include general plan amendments and zoning amendments, as future development proposals must conform to them. The Dalidio Ranch initiative measure contains both amendments to the County general plan and the County zoning regulations. The proposed Dalidio Ranch land use category amendment to the Land Use Element of the County's General Plan sets forth quite specific land uses contemplated for different sub areas of the Dalidio Ranch area: retail commercial, conservation open space/recreational/organic agricultural, residential, business park and community facilities.

The initiative includes technical conforming amendments to the County general plan in an attempt to ensure consistency with County goals, policies, objectives and implementation measures. The proposed zoning amendments are very detailed and also attempt to carefully track the proposed general plan amendments such that there will be no discretionary review by the County – or any other agency – for the project to proceed.

The idea is that future County approvals will simply involve several ministerial actions confirming that the plans comport with zoning requirements and the conditions of approval included in the initiative measure. Thus, there will be no exercise of discretion that might provide an opportunity for further public or public agency (such as the County, other local government agencies or the City) input into the project, and thereby reducing the opportunity for a potential legal challenge on abuse of discretion grounds. Still, there may be instances where the initiative measure may be inconsistent with the general plan. County staff is most familiar with the County's general plan and thus is in a better position to identify any potential inconsistencies.

Approvals will be needed from various state agencies, and an initiative may not regulate matters that have been regulated by the State. Thus, the initiative cannot take away regulatory authority of state agencies with regard to water quality and wastewater disposal, air pollution, state highways, and other impacts under state jurisdiction. For example, the Regional Water Quality Control Board will have jurisdiction over water and wastewater services to the site; and CalTrans will have jurisdiction over adjacent state highways. Obviously, a county initiative measure cannot preempt federal regulation, either. For this reason, the Air Pollution Control District (a local agency charged with ensuring compliance with state and federal laws and regulations) will have jurisdiction over air quality issues. Flood control matters fall within the jurisdiction of the Army Corps of Engineers and possibly the Federal Emergency Management Agency (FEMA).

2. Policy Implications – What are the long-term policy and precedence implications for our county and its cities if land use decisions and projects are pursued in such a fashion?

Background. The development of land is usually permanent, and specific development projects typically impact communities for decades. That is why, over the course of many years, permit procedures have been established at the federal, state and local levels of government. These procedures exist to assure that the development of the land is appropriate and that the impacts of projects are known and addressed. To reach such judgments, these procedures assure careful study of often highly complex and technical issues, and they assure ample opportunities for citizens to fully participate in the decision-making process.

Within certain guidelines established by Federal and State law, individual communities can tailor the process to promote the highest level of compatibility with their goals, standards and needs. Features found in all land development processes within the State of California include permit applications, staff review, public hearings before planning commissions and elected officials (such as city councils and board of supervisors) and compliance with CEQA. CEQA was established in 1972 to assure that the environmental impacts of projects are fully understood, and hopefully mitigated, before decisions are made – for example, the impacts to air quality, traffic, water, noise and agriculture.

Initiative approach circumvents these careful public review policies and procedures. The effort to gain approval for the Dalidio Ranch project by taking to a vote of all San Luis Obispo County residents avoids all of these policies and procedures, and more. Therefore, while it may appear on the surface that democratic practices are being promoted by allowing citizens to vote on a development application, this strategy actually omits the usual steps in the development review process created to protect citizen involvement, home rule, and, in general, the deliberate review of highly complex matters.

If this measure is successful, developers throughout the County may see it as a much faster and less expensive route to the development of land than following the path established to assure careful and participative decision-making. The elected representatives of citizens – city councils and the Board of Supervisors – will be cut out of such approaches, whether the developments are within the city limits, in the County area, or like the Dalidio Ranch, adjacent to the city limits of a community.

With regard to “edge development,” in 2005, the County and the City entered into a Memorandum of Understanding intended to discourage urban-like development in the County, but at the edge of the City. Other cities have entered into similar agreements. These agreements will carry no weight if a project totally avoids both city and County development review processes. For this reason, the County, every city and all special districts should be concerned about the potential precedent setting implications of this measure.

In summary on this issue, however one may feel about the Dalidio Ranch and its long history, the greater legacy – if it is successful – will be the poor precedent that this approach sets in circumventing meaningful public participation and full review of project impacts.

3. *Service Issues* – What are the facility and service impacts of building a large urban project on land surrounded by an incorporated city, such as the impact on streets, fire and paramedic service, police response, water and wastewater service? What policy guidance is offered regarding County development near City boundaries by the Memorandum of Understanding recently agreed to between the County and the City?

The impacts of building a large urban project on land surrounded by an incorporated city are profound. A discussion of the likely impacts to three specific City services resulting from the development of the Dalidio Ranch, as proposed to voters, illustrates this point.

Public Safety Service: Fire, Paramedic and Police. The delivery of public safety services is ideally based on utilizing the closest resources rather than being restricted by arbitrary jurisdictional lines. With this in mind, like public safety agencies everywhere, police and fire agencies within the County of San Luis Obispo have worked closely together in reaching a series of agreements to share resources and assist one another without “charging back” for services. The idea is that all agencies benefit equally from such mutually supportive relationships, and the public safety of citizens are better served.

This “quid pro quo” approach can be strained, however, when substantial urban-like development is built at the edges of cities, requiring cities to disproportionately serve unincorporated areas. To reduce this problem in our County, the County and several cities recently adopted a Memorandum of Agreement that requires a degree of greater coordination between the County and cities when considering development adjacent to a city, or within its “Sphere of Influence” (SOI). Specific issues to be addressed on a case-by-case basis include impact mitigation, urban services and development requirements for projects within the SOI.

However, existing County and City agreements do not contemplate a project like the Dalidio Ranch: very large in scale and intensity, built in the County but surrounded by a city, and approved outside the established processes of either agency. Thus, from a legal and regulatory standpoint, the agreements are not relevant.

From a practical standpoint, however, public safety professionals will always make public safety the highest priority. Therefore, if “911” is called for a problem at the Dalidio Ranch, such as a medical emergency, a robbery or a fire – the closest agency is going to respond. This means that the City police and fire departments will most likely be responding to all significant emergency police and fire calls to the Dalidio Ranch, regardless of jurisdictional issues, and even though there will be no offsetting revenue to the City from the development.

An additional concern from a fire service perspective is the use of onsite water for firefighting purposes; it may be inadequate given the high density of commercial spaces. Large quantities of water would need to be stored and provisions made for adequate pressure for firefighting use. Another firefighting concern is the incorporation of fire sprinklers into the commercial buildings, which is a City requirement, but not necessarily a County one.

With regard to police calls, a development of this magnitude would generate additional calls that are urgent in nature (such as robberies, burglar alarms and assaults) as well as less urgent (shoplifting and thefts). Currently, Sheriff Patrol deputies do not police the Dalidio Ranch area

and there is no station nearby. We would expect the City patrol units to be requested to respond to emergency calls when deputies are not nearby. This places a significant burden on City officers who are already short staffed. The County could remedy this by placing a Sheriff's Deputy at the center, but this would take a significant amount of resources.

Sewer and Water Service. Essential utility services such as water and sewer service are typically provided by a government agency or regulated by the Public Utilities Commission. This is to ensure that such utility services are very carefully provided, balancing such things as efficiency, cost effectiveness and environmental sensitivity. As presently proposed, however, the Dalidio Ranch development supplies its own water and wastewater services.

There are questions regarding the ability of the development to privately meet current service standards in these areas. Typically, such questions would be evaluated by a processing agency in a lead role (e.g. a city or the County). This is because the processing agency will have to cope with any problems, if concerns are not sufficiently addressed. For example, a wastewater facility that is not properly designed, constructed, operated and/or maintained has the potential to impact neighboring properties (in the City) with potential spills, odors and illegal discharge. In this case, there is no processing agency because the initiative bypasses the usual process.

However, there are still likely to be many issues that fall within the jurisdiction of the Regional Water Quality Control Board (RWQCB) regarding wastewater discharge and the construction and operation of the facilities necessary to serve the project's needs. For example, the City has been required to expend tens of millions of dollars in recent years to upgrade an already sophisticated treatment plant in order to comply with the requirements of the RWQCB for discharge to San Luis Obispo Creek. Given that San Luis Obispo Creek is the same receiving water proposed for Dalidio Ranch discharge, how effective will a package treatment plant be at meeting these same stringent requirements and at what cost?

Street Maintenance and Transportation. Interior streets would presumably be maintained by the development. However, all surrounding City streets that allow vehicles to get to and from the development would be used, resulting in added City maintenance responsibilities with no offsetting revenue from the development. Traffic impacts on City streets – particularly with the absence of an interchange – would be very significant. These impacts, and the mitigations proposed with the initiative, are discussed in the next section of this report.

With regard to other transportation issues, the County transit system does not presently serve the Dalidio Ranch area, and doing so in the future would be inefficient and costly to the County. From a “demand” perspective, public pressure to provide such service is likely to fall to the City.

4. Traffic Issues and Absence of Interchange – What are the traffic and neighborhood impacts of not building the interchange with the project, how will these impacts be addressed, and how will the needed interchange be paid for in the future?

Overview. As described in more detail below, the mitigations presented in the initiative measure will fall far short of mitigating the projects' significant adverse impacts on traffic. Each one of the mitigations will create an “escrow” account that fees will be paid into, with the monies only available to the identified agency after certain milestones have been met. If the project

milestones and deadlines are not met, the mitigation fees are to be returned to the developer – except for the Prado Road Interchange Mitigation Fee, which will be returned to the County of San Luis Obispo for use on area roads if the fee is not used within 10 years of the date the escrow account is created. The proposed mitigation strategies don't actually build anything, nor is the County of San Luis Obispo the agency responsible for actually assuring that these projects are completed. The most significant project that won't be physically built by the proposed mitigation is the Prado Road Interchange.

Outlined below is a more thorough discussion of the proposed traffic mitigations, followed by a discussion of the interchange.

Traffic Mitigations and Mitigation “Conditions.” Attachment F of the Petition/Initiative sets forth the proposed project's traffic mitigation strategy. There are four traffic mitigations proposed:

1. Prado Road/Highway 101 Interchange “Fair Share” Fee Payment and Right of Way Dedication
2. Calle Joaquin Extension “Fair Share” Fee Payment
3. Calle Joaquin/Los Osos Valley Road “Fair Share” Fee Payment
4. Los Osos Valley Road/Madonna Road “Fair Share” Fee Payment

Traffic Mitigation #1: Prado Road/Highway 101 Interchange. Prior to the first occupancy permit, the project will dedicate approximately 13 acres to Caltrans for the right of way (ROW) of the Prado Road/Highway 101 Interchange.

Prior to the first occupancy permit, the project will establish an escrow account with Caltrans that will pay \$4,000,000 towards the Interchange project. Of that amount, no more than \$750,000 can be used to complete design and environmental review of the Interchange project. The remaining \$3,250,000 can only be accessed by Caltrans when a fully executed construction contract for the Interchange has been obtained. If these milestones are not met within 10 years of the escrow account creation, the monies in escrow will revert to the County of San Luis Obispo for use on area streets and roads that benefit the project.

The \$4 million amount is far below the project's actual “fair share” for this needed interchange improvement. Based on the detailed analysis prepared as part of the original “Marketplace” proposal, its “fair share” is 52% of a \$22 million project, or \$11.4 million. This is far short of its “fair share.”

Traffic Mitigation #2: Calle Joaquin Extension “Fair Share” Fee Payment. Prior to the first occupancy permit, the project will establish an escrow account with the City of San Luis Obispo that will pay \$150,000 towards the extension of Calle Joaquin from Los Osos Valley Road to the Marketplace project (note: the petition actually says \$150 but that is assumed to be a typographic error). The City will have no more than 12 months from the date of the escrow to complete environmental review and design and award a construction contract for the project. If the milestone deadline is not met, all monies in escrow will revert to the developer.

Prior to the first occupancy permit, the project will dedicate a portion of the necessary right-of-way (ROW) for the Calle Joaquin Extension project to the City of San Luis Obispo – the portion on the project property that lies within County jurisdiction. The remaining portion of the ROW is on neighboring City property *recently dedicated for open space* as a part of the Gearhart project. It would be highly unusual for the City to facilitate a road project across City open space that extends into the unincorporated area of San Luis Obispo County to serve a County development. In addition, a Calle Joaquin extension is not in our Circulation Element nor has it been planned for as a part of area development.

The \$150,000 is probably insufficient to complete even the design or environmental clearance of the project (note: while the Initiative contains language that may allow CEQA exemption for the project it does not allow for CEQA exemption for secondary impacts of mitigation projects such as these being discussed). Thus, even if the City wished to make all of the policy exceptions and General Plan amendments required to facilitate the road, it is highly unlikely that the 12 month milestone could be met and project completed.

Traffic Mitigation #3: Calle Joaquin/Los Osos Valley Road “Fair Share” Fee Payment. Prior to the first occupancy permit, the project will establish an escrow account with the City of San Luis Obispo that will pay \$250,000 towards improving the intersection of Calle Joaquin at Los Osos Valley Road (LOVR). This is a City controlled intersection that has Caltrans ROW issues on both the south and west sides. The City will have no more than 12 months from the date of the escrow to complete environmental review and design and award a construction contract for the project. If the milestone deadline is not met all monies in escrow will revert to the developer.

This money could be used to pay for relocation of Calle Joaquin; however, it is substantially below the City’s transportation impact fee that this project would otherwise pay for its fair share of the LOVR/Highway 101 interchange project.

Traffic Mitigation #4: LOVR/Madonna “Fair Share” Fee Payment. Prior to the first occupancy permit, the project will establish an escrow account with the City of San Luis Obispo that will pay \$20,000 towards improving the intersection of Madonna Road at Los Osos Valley Road. This is a City controlled intersection. The City will have no more than 12 months from the date of the escrow to complete environmental review and design and award a construction contract for the project. If the milestone deadline is not met, all monies in escrow will revert to the Developer.

Beyond the current small operation improvement project to be completed by the Irish Hills Development, the next improvements to the intersection will be very complex and expensive. This intersection has not been identified in the City’s Circulation Element for widening beyond the current configuration. Therefore, a City General Plan amendment may be required to widen the intersection. There will be other difficult issues, such as removing the cypress tree row. Because the \$20,000 can only be used after a contract award, it is highly unlikely that the City can identify, design and environmentally clear a project within the 12 month milestone. Therefore, it is highly unlikely that this mitigation measure will be implemented.

No Prado Road Interchange as Part of Project. As noted above, the transportation impacts of the initiative/project are significant and unavoidable due to the proposed characteristics of the

project and the likelihood that no mitigation will be built as part of the project. Without the interchange being built (at least in the foreseeable future), the situation is substantially worse, as discussed further.

The previously approved (2004) Marketplace project was determined to cause Class I significant and un-avoidable traffic impacts, even though it included the Prado Road Interchange as part of the project. The proposed initiative does not include the Prado Road Interchange, and as such, it is easy to conclude that upon occupation of the project, even worse traffic impacts will occur along the City streets of Madonna, Los Osos Valley Road, Higuera, Oceanaire, El Mercado and Dalidio Drive. Similarly, we can expect significant impacts along Highway 101 mainline and ramp locations.

The following summarizes traffic studies that have been performed at this site for previous development applications. While the specifics of these projects are different from the proposed Dalidio Ranch project, they are similar enough that the findings from these prior reviews are highly instructive in assessing the impacts of this one.

November 1999 Administrative Draft Final Environmental Impact Report (EIR). The City Administrative Draft Final EIR for the *Dalidio Property Annexation*, dated November 1999, was the last document that analyzed impacts of a major project at this site that did not include Prado Road interchange as part of the project scope. That project was significantly smaller than the proposed one before the voters in this initiative measure.

The EIR concluded that the project proposed at that time, *without the Prado Road interchange*, would significantly impact five (5) intersections along Madonna Road and LOVR and would *drop speeds of traffic on these roads to less than 10 miles per hour*. Significant delays to side streets and residential streets in the Oceanaire neighborhoods were also forecast. Building the Prado Road interchange as a mitigation measure for the project was identified in the “existing plus project” scenario analyzed in this EIR. Based upon this information, the EIR consultant and the City determined that the Prado Road interchange should be considered part of the “project.” The EIR also concluded that the project should pair fair share mitigation of the future improvements to the LOVR/Highway 101 interchange improvement project.

April 2000 Revised Draft EIR Dalidio Property Annexation. The 1999 Final EIR was revised to amend the project description and include the interchange as part of the project. Many of the impacts were the same as the November 1999 EIR. A sensitivity analysis was conducted for Year 2000 conditions that said up to 150,000 square feet of commercial could possibly be built without significant street mitigation or completion of the interchange project. Any additional development would need significant roadway mitigation to be constructed to mitigate impacts. For context, the proposed Dalidio Ranch project is over 500,000 square feet in size, far in excess of this 150,000 threshold.

January 2004 Final EIR Dalidio/San Luis Marketplace Property Annexation and Development Project. The 2004 Final EIR for the most recent development proposal at this site was for a much a larger project than the one reviewed in 1999 and 2000. The “project” studied under that EIR included the Prado Road interchange. Significant Class I un-mitigatable impacts were identified as part of the 2004 process. Similar to the 2000 Draft EIR, a sensitivity analysis was

conducted for Year 2003-04 conditions. However, with the change in area traffic, only 100,000 square feet of commercial development could be built without significant street mitigation or completion of the interchange project. Any additional development would need significant roadway mitigation to be constructed to mitigate impacts. As noted above, the Dalidio Ranch project is far in excess of this 100,000 s.f. threshold.

Traffic Impact Summary. Based on prior studies that have been prepared for similar projects in the past, we know that the proposed project will result in significant traffic impacts for which there will be woefully inadequate mitigations.

5. *Open Space and Agricultural Land Issues* – What are the major policy issues for the City and County as they relate to open space and agriculture land preservation?

Many cities and all counties in California have General Plan policies to protect agricultural lands, to mitigate for unavoidable losses to those lands, and to direct growth away from those lands wherever possible. The City of San Luis Obispo has long recognized that the Dalidio and two neighboring properties are located such that their ultimate development is considered likely, but that about 50% retention of those lands would still leave a viable, functional, and attractive agricultural open space to operate on the protected lands. Therefore, the City's 1994 General Plan showed this retention as a City policy, and that policy was agreed to by the Dalidio family. The Marketplace proposal of 2004 met that requirement by setting aside 55 acres to be protected on-site and 24 acres to be protected offsite in the Buckley Road area. The recently approved Gearhart annexation/project off of Calle Joaquin has also met the 50% open space requirement.

State law states that the loss of prime agricultural land is a significant impact that should be avoided if possible – and mitigated if not. City and County policies seek to protect important farmlands and to locate permitted development in such a way that farmland can remain viable in the long term. Under existing City policy, there would be approximately 100 acres of farmland in this area (combining the land protected on the Dalidio, Gearhart and Madonna properties), which agricultural experts feel is easily large enough to be viable in its own right. The current Dalidio Ranch proposal eliminates the potential for continued agricultural production, except for a small, "boutique" operation on approximately ten acres.

6. *Fiscal Impacts* – What are the likely fiscal consequences of building a large urban-like development on County land that is surrounded by a city and how will these impacts be addressed? Who will provide the ongoing operation and maintenance support required by some public amenities now envisioned for the project?

There will be significant adverse impacts in building a large, urban-like development on County land that is surrounded by the City, on both the revenue and expenditure side; and under the proposed initiative, there will be no way of addressing them.

Setting aside how major new infrastructure will be put into place as needed to service the project (which is discussed elsewhere), this development will have significant impacts on key City services like police, fire and streets. Why? Because as the nearest emergency responder, we will end-up responding to the lion's share of police and fire calls for service; and visitors to this development will use City roads to get there. However, there will be no offsetting revenues as

would normally be the case if the project developed in the City, like sales tax, property tax and transient occupancy tax (TOT) revenues from visitors staying in hotels and motels).

In fact, not only will there be no new revenues to service these added costs – year in and year out – but we will lose revenues due to the transfer effect of the new retail and hotel uses on existing businesses. For example, the economic analysis prepared as part of the review process projected that 33% of the new sales tax revenue from the project would be transfers from existing businesses, and about 20% of the TOT revenues. However, even with these transfers, we would still see “net” increases of 67% from the sales tax and 80% of the TOT revenues generated by the project – if the project is built in the City. However, if the project is built in the County, San Luis Obispo will experience all of the transfers, but none of the added revenues.

In conclusions, assuming that this project generates similar revenues as the previous proposal, City revenue losses alone will be about \$700,000 each and every year. Combined with added service costs, this is likely to result in a net “takeaway” of about \$1 million annually.

And this does not include funding for the so-called amenities of the project, like a sports field or senior center. While land may be set aside for these, there is no funding mechanism for building, operating or maintaining these facilities.

7. Other Stakeholder Agencies – Which other agencies should be invited to participate in a task force fact-finding dialogue?

Stakeholders would seem to include Caltrans, the Regional Water Quality Control Board, the Air Pollution Control District, LAFCo and other cities subject to the policy and precedent implications of the initiative, as discussed throughout this review.

MARKETPLACE PROJECT STUDIES

- Air Quality technical data prepared by Rincon Consultants, November 2003.
- Noise analysis prepared by Rincon Consultants, November 2003.
- Historical Resources Inventory and Evaluation, San Luis Marketplace Annexation prepared by Bertrando and Bertrando Research Consultants, May 1999.
- Phase-1 Archaeological Survey of the Proposed Prado Road/Highway 101 Interchange prepared by Applied EarthWorks, Inc., March 2000.
- Traffic and Circulation technical studies and data prepared by Fehr & Peers, October 2003.
- Drainage and Flood Analysis for San Luis Obispo Marketplace Area Annexation, Phase I prepared by Cannon Associates, May 2003.
- Local & Cumulative Hydrologic & Hydraulic Impacts Analysis, prepared by Questa Engineering Corp., October 2003, and report update, March 2004.
- Route 101/Prado Road Interchange Preliminary Bridge and Retaining Wall Report and Type Selection Recommendations prepared by Mark Thomas & Company, Inc., April 2003.
- Various technical studies prepared by PAR Environmental Services, Inc. dated October 2000 evaluating impacts of the proposed Highway 101/Prado Road interchange, including: Noise Analysis; Socioeconomic Report; Air Quality Technical Report; Natural Environment Study; Limited Level I Preliminary Site Assessment; Visual Resources Assessment Report; and Historic Property Survey Report.